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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement* submitted by the International Indian Treaty Council, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The United Nations (UN) held two World Conferences to Combat Racism, in 1978 and 1983, prior to the World Conference Against Racism (WCAR) at Durban, South Africa, on August 31 – September 7, 2001.

The 1978 World Conference to Combat Racism Declaration used the word "peoples" with reference to Indigenous Peoples without qualification or restriction on the word's implications under international law. The first World Conference declared:

21. The conference endorses the right of indigenous peoples to maintain their traditional structure of economy and culture, including their own language, and also recognizes the special relationship of indigenous peoples to their land, and stresses that their land, land rights and natural resources should not be taken from them.

Almost immediately, in 1983, the second World Conference to Combat Racism retrogressed. It failed to use the term Indigenous Peoples in its Declaration and Programme of Action relegating us to "populations." But it did repeat the statements recognizing Indigenous Peoples' special relationship to their lands and our right to our land and natural resources:

22. the rights of indigenous populations to maintain their traditional economic, social and cultural structures, to pursue their own economic, social and cultural development and to use and further development their own language, their special relationship to their land and its natural resources should not be taken away from them…

Indigenous Peoples took a great interest in the 2001 World Conference Against Racism and all of its preparatory process with the hope that its outcomes would finally begin a concrete UN contribution and commitment to the elimination of racial discrimination against Indigenous Peoples throughout the world.

On August 10, 2000, for example, over 200 Indigenous participants attended a preparatory consultation for the WCAR, hosted by the New York Office of the High Commissioner on Human Rights, on the 6th Commemoration of the International Day of the World's Indigenous Peoples. Indigenous participants recommended to the Preparatory Committee that the WCAR Declaration and Programme of Action use the word Peoples and no other words such as "populations" or "people" with reference to Indigenous Peoples.

Lamenting the fact that the above quoted principles from the first two World Conferences had not been observed, Indigenous Peoples recommended that the WCAR Declaration and Programme of Action recognize indigenous peoples' right to own and control their lands and territories and have a right not to be deprived of their means of subsistence or their natural resources, and that the WCAR should call upon the States to take effective measures to protect Indigenous Peoples' rights to their land, territories and natural resources.

This call was repeated many times over during the preparatory process: at the May, 2000 Prepcom II, by its Indigenous Caucus; in November of 2000, by the Indigenous Initiative for Peace; and, the Intersessional working Group on the United Nations Draft Declaration on the rights of Indigenous Peoples, November, 2000.

Indigenous Peoples participants at the Americas Preparatory Conference to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, in Santiago de Chile on

3rd and 4th December 2000, adopted a Declaration calling for full recognition of Indigenous peoples as peoples, and recognition of indigenous peoples' rights to lands, territories and natural resources. Again, Indigenous Peoples meeting in Quito, Ecuador, in March of 2001, at a UN sponsored NGO Forum, also described racism in the Americas as an extension of colonialism, calling for the recognition of Indigenous Peoples as "peoples" and the recognition of indigenous systems of governance of their territories.

The Regional Meeting of Indigenous Peoples on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held at Sydney, Australia, February 2001, again called for the recognition of Indigenous Peoples as Peoples, and in particular, their inherent right of self determination and of ownership and control of their territories and resources.

The Indigenous Peoples Millennium Conference, Panama City, May, 2001, gathered the emergent world wide consensus of Indigenous Peoples on recommendations to the WCAR. It considered the above cited gatherings as well as the Community Consultation on Racism, Racial Discrimination, Xenophobia and Related Intolerance, Kampala, Uganda, April-May, 2001; the Abokabi Declaration of Ghana, April 2001; and, the Kidal Declaration, of Mali, January 2001. Our consensus included the recognition of indigenous peoples as peoples within the full meaning of international law, and our right of self determination, as well as the reiteration of the first two World Conferences' recognition of the special physical and spiritual relationship between indigenous peoples and their lands, and that their lands and natural resources should not be taken from them.

The Santiago Indigenous Declaration, and the Sidney Report eloquently reflected the hopes and aspirations of the world's Indigenous Peoples for the WCAR, after 500 years of colonization, religious persecution and intolerance, genocide, racism and its contemporary manifestations, the militarization of Indigenous lands, the new and pernicious manifestation of environmental racism, the unabated loss of sacred lands and sacred sites, the consistent failures of governments to consult in good faith with Indigenous Peoples to secure their free and informed consent on matters that affect them, the alarming loss of their environments and major means of subsistence and the ever present threats to their survival.

It should be noted that these manifestations of racism are violations of civil, political, economic, cultural and social rights and fundamental freedoms already recognized as Indigenous rights under existing international standards.[1]

Keeping in mind the definition of racial discrimination in the CERD Convention, that of any distinction based on race or ethnic origin that has the purpose or effect of nullifying or impairing the recognition or enjoyment of other human rights, Indigenous Peoples were in global consensus that the refusal of States to use the word Peoples without restriction or condition, was itself racist. All that Indigenous Peoples asked of the WCAR was a reaffirmation of our already internationally recognized collective rights as Peoples, even as declared by the two prior World Conferences.

In spite of great participation by Indigenous Peoples throughout the process, and support from a great many States, upon the insistence of the North, led by the United Kingdom, the WCAR retrogressed, not only from the two prior World Conferences, but from existing international human rights standards.

With regard to the word "peoples," the WCAR Declaration defines the term "indigenous peoples,"

as a term that, "..cannot be construed as having any implications as to rights under international law."[2] The word "Peoples" in the Declaration is thus an empty word, devoid of meaning, devoid of rights.

Equally offensive to our human dignity is the retrogressive change made to the prior two World Conference Declarations with regard to land and natural resources:

> We also recognize the special relationship that indigenous peoples have with the land as the basis for their spiritual, physical and cultural existence and encourage States, wherever possible, to ensure that indigenous peoples are able to retain ownership of their lands and natural resources to which they are entitled under domestic law.[3]

The WCAR thus only "encourages" observance of our internationally recognized human rights and fundamental freedoms (even though human rights are legally binding obligations under international law) and only where "possible." Worse, internationally recognized rights to our lands and natural resources are subjected to domestic law, in effect approving State thefts of land that have been condemned by both the Human Rights Committee and the CERD Committee.[4]

Mr. Theo van Boven, a recognized United Nations expert on human rights of long and eminent standing, presently a member of the CERD Committee, examined the lack of commitment by European States (to which we would add the United States, and call this collectivity the "North") to the first two world conferences.[5] He pointed to the North's historical failure to fully participate in United Nations processes in the struggle against racism, "virtually ignoring United Nations standards and pronouncements on the issue" including CERD and the CERD Committee and its monitoring mechanisms.[6] He noted the North's historical resentment and disassociation from the UN over questions of racism:

> And, indeed, it is obvious that certain deeply rooted patterns of racism and racial discrimination are closely related to the colonial past with its white supremacy and that nefarious doctrines of racial superiority were preached and practiced by Europeans. In other words, many Europeans feel vulnerable and uncomfortable when they are taken to task on issues of racism and racial discrimination.[7]

Given the ever-present rapacious hunger for Indigenous lands and resources reflected by the WCAR Declaration, this "vulnerability and discomfort" is well justified even now.

As an additional reason for the failures of the first two World Conferences, Mr. van Boven also cited the North's use of the UN to promote its own perceived political interests.[8] The same may be said of the Durban WCAR.

The WCAR outcomes stressed a need to finally begin a good faith global struggle against racism. Its failures amply demonstrated to Indigenous Peoples that racism underlies all other denials of Indigenous human rights and fundamental freedoms even by the United Nations itself. We call upon all States of good faith to continue full United Nations activity against racism. A fully committed and concerted struggle against racism by the international community has yet to begin.

For all our relations.

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[1] See, ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent States; Article 1, International Covenant on Civil and Political Rights (and Human Rights Committee Concluding Observations on Canada's Fourth Periodic Report, applying Article 1 and the right of Self-Determination to Canada's Indigenous Peoples, CCPR/C/79/Add.105, 7 April 1999); Convention on the Elimination of All Forms of Racial Discrimination, Article 5, 5 (v) (and the CERD Committee's General Recommendation XIII 5; Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia. 19/04/200. CERD/C/304/Add.101. CERD/C/56/Misc.42/rev.3, 24 March 2000).

[2] World Conference Against Racism Declaration, paragraph 24, found at the Human Rights website, http://www.hchr.ch, visited January 10, 2002. Ironically this paragraph is found under the section entitled, "Sources, causes, forms and contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance."

[3] Id, at para. 43.

[4] Human Rights Committee, Fn. 1; CERD Committee General Recommendation XXIII; CERD Concluding Observations, Australian report under Article 9 of the Convention, CERD/C/56/Misc.42/rev.3.

[5] United Nations strategies to combat racism and racial discrimination: past experiences and present perspectives, Background Paper prepared by Mr. Theodor van Boven, member of the Committee on the Elimination of Racial Discrimination, in accordance with paragraph 51 of the Commission resolution 1998/26.

[6] Id, para 2.

[7] Id, para 3.

[8] Id, para 3 (a) and (d).